



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

ELP  
Docket No. 5169-98  
15 July 1999

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments  
(2) Case Summary  
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlistment member of the United States Navy/Marine Corps, filed enclosure (a) with this Board requesting, in effect, that his reenlistment code be changed.

2. The Board, consisting of Messrs. Ivins, Rothlein, and Taylor, reviewed Petitioner's allegations of error and injustice on 14 July 1999 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (a) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy on 22 July 1993 for four years at age 18. The record shows that on 27 July 1993 he was diagnosed by a medical officer with "possible" early alcohol and

drug dependence. In this regard, Petitioner reported monthly use of alcohol and marijuana for about 10 years.

d. On 28 July 1993, a Navy drug laboratory reported Petitioner's accession urinalysis of 23 July 1993 had tested positive for marijuana.

e. Petitioner was separated on 3 August 1993 by reason of "void enlistment-lack of jurisdiction" and assigned an RE-4 reenlistment code. The separation processing documentation is not on file in the record. The DD form 214 issued on Petitioner's separation from the Navy has all zeros entered in the record of service section (block 12). It states in the remarks section (block 18) "Entered: 93JUL22 Released: 93AUG03 Enlistment Void. This release does not constitute a discharge and a discharge certificate has not been issued."

f. The Board is aware that federal law requires that an enlistment be voided if an individual is determined to be drug or alcohol dependent. However, the law also requires that the testing and evaluation to determine dependence be conducted within 72 hours of reporting to initial active duty.

g. The Board is also aware that an individual can be separated due to an erroneous enlistment if there is a condition which, had been known prior to enlistment, would have prevented enlistment. Pre-service alcohol and drug dependence are such conditions. Such a separation is also appropriate if an individual tests positive on an accession urinalysis. The regulation requires the assignment of an RE-4 reenlistment code to individuals separated by reason of erroneous enlistment due to alcohol/drug abuse. Individuals with less than 180 days of active service receive an uncharacterized entry level separation.

h. Petitioner's statement in support of his application appears to be incoherent. He requests that his pay grade be changed from E-4 to E-1. The record contains no evidence that Petitioner was ever advanced to pay grade E-4. The Board presumes that Petitioner is requesting that his reenlistment code be changed from RE-4 to RE-1.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrant favorable

action. The Board believes that Petitioner's enlistment could have been properly voided if a diagnosis of alcohol and drug dependence had been made within 72 hours, as required by law. Whether or not Petitioner was dependent cannot be determined from the dependency screening evaluation filed in the medical record. However, since he was not diagnosed as possibly dependent until five days after he reported to active duty, the record should not show that his enlistment was voided. Since he tested positive on his accession urinalysis, he could have been separated by reason of erroneous enlistment due to drug abuse. Therefore, the Board concludes that the record should be corrected to show that he was discharged with an uncharacterized entry level separation by reason of erroneous enlistment. The DD Form 214 should also be corrected to show the appropriate dates and computation of service in block 12, and the remarks in block 18 be removed.


Concerning the reenlistment code, the Board notes that alcohol and drug dependence is disqualifying for service, and regulations require the assignment of an RE-4 reenlistment code when an individual is separated due to erroneous enlistment due to pre-service drug use. Therefore, the Board concludes that the RE-4 reenlistment code was correctly assigned and no change is warranted.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected by issuing him a new DD Form 214 which reflects that he served on active duty from 22 July to 3 August 1993 and on the latter date received an uncharacterized entry level separation by reason of erroneous enlistment.
- b. That no other relief be granted
- c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.
- d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross references being made a part of Petitioner's naval record.


4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder



ALAN E. GOLDSMITH  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6 (e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER  
Executive Director